

**DOCKET FILE COPY ORIGINAL**

**From:** CCBSecretary  
**To:** OSfilings  
**Date:** Wed, Jul 24, 2002 8:10 AM  
**Subject:** Fwd: Request for Review Electronic Filing Attached (96-45 and 97-21) - Part 2 of 4 emails

**CC:** FilingsArchive

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**From:** "Ken Johnson" <kjohnson@bennetlaw.com>  
**To:** <ccbsecretary@fcc.gov>, <acheng@fcc.gov>, <jshook@fcc.gov>, <jlande@fcc.gov>, <ccbsecretary@fcc.gov>, <ltubbs@neca.org>  
**Date:** Tue, Jul 23, 2002 4:19 PM  
**Subject:** Request for Review Electronic Filing Attached (96-45 and 97-21) - Part 2 of 4 emails

Part 2 includes Exhibits 1 and 2.

Kenneth Johnson  
Bennet & Bennet, PLLC  
1000 Vermont Avenue, NW  
10th Floor  
Washington, DC 20005  
phone: 202-371-1500  
fax: 202-371-1558  
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**CC:** <kjohnson@bennetlaw.com>

# EXHIBIT 1

## July 23, 2002



Universal Service Administrative Company

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Administrator's Decision on Contributor Appeal

May 31, 2002

Marjorie G. Spivak  
Kenneth C. Johnson  
Bennet & Bennet, PLLC  
Crown Communication Inc.  
1000 Vermont Avenue, NW  
10<sup>th</sup> Floor  
Washington, DC 20005

Re: Crown Communication Inc. (ID # 820426)  
Contributor Appeal

Dear Ms. Spivak and Mr. Johnson:

After thorough review, the Universal Service Administrative Company (USAC) has completed its evaluation of the letter of appeal on behalf of Crown Communication Inc. (Crown) dated January 15, 2002 (Appeal). Your Appeal requests that USAC accept Crown's late-filed FCC Form 499-A (Form 499-A) reporting revenue for the period January 1 – December 31, 1999.

Decision on Appeal: Denied.

USAC hereby denies Crown's Appeal.

Explanation of Decision:

Federal Communications Commission (FCC) regulations in force during the relevant time period required carriers to file a Universal Service Worksheet (FCC Form 499 or, previously, FCC Form 457) twice annually, in April and September, and required USAC to bill contributors based on reported revenues. *See generally* 47 C.F.R. Part 54. USAC is required to estimate revenues for carriers that fail to file the required worksheets and to bill those carriers based on the estimated revenue. FCC regulations do not require USAC to accept any late-filed revisions to the Universal Service Worksheets.

However, in order to improve the accuracy of the revenue reported, the USAC Board of Directors (USAC Board) has authorized staff to allow carriers to file new or revised worksheets after the original due date.

---

2129 L Street, N.W., Suite 600, Washington, DC 20037 Voice: 202.776.0200 Fax: 202.776.0030  
Visit us online at: <http://www.universalservice.org>

Crown Communication Inc.

May 31, 2002

Page 2

The instructions to the worksheets have included various deadlines by which revisions could be made, the longest of which is eight months. The deadline for form revisions is clearly stated in the instructions for the Form 499-A on which the attempted revision was submitted, and is discussed in a document entitled "Helpful Hints" that was included with the forms. In addition, questions concerning forms and revisions can be addressed to USAC's data collection agent via email at "Form499@neca.org." In order to afford carriers an adequate opportunity to revise their reported revenues, the USAC Board has authorized staff to allow carriers a longer 12-month period for the filing of new or revised Universal Service Worksheets. Since September 1, 1999, USAC has allowed carriers to file new or revised Universal Service Worksheets after the original due date and for a period limited up to 12 months from the initial due date of the worksheet in question.

The Form 499-A at issue was due on April 1, 2000. Crown's revised Form 499-A was received by USAC in November 2001. Because Crown's attempted submission was after the filing revision deadline of the worksheet in question, USAC rejected the submission of this form consistent with its previously adopted policy.

Thus, for the reasons set forth above, Crown's appeal must be denied.

If you disagree with the USAC response to your Letter of Appeal, you may file an appeal with the Federal Communications Commission (FCC) within 60 days of the date of this letter. The FCC address where you may direct your appeal is:

Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, DC 20554

Please be sure to indicate the following information on all communications with the FCC:  
"Docket Nos. 96-45 and 97-21."

Sincerely,

USAC

Universal Service Administrative Company

cc: Anita Cheng, FCC Common Carrier Bureau  
James Shook, FCC Enforcement Bureau  
Lisa Tubbs, USAC, Manager Revenue Administration



# EXHIBIT 1

## July 23, 2002

Administrator's Decision on Contributor Appeal

May 31, 2002

Marjorie G. Spivak  
Kenneth C. Johnson  
Bennet & Bennet, PLLC  
Crown Communication Inc.  
1000 Vermont Avenue, NW  
10<sup>th</sup> Floor  
Washington, DC 20005

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Crown Communication Inc.  
May 31, 2002  
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445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, DC 20554

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'Docket Nos. 96-45 and 97-21.'

Sincerely,

USAC

Universal Service Administrative Company

cc: Anita Cheng, FCC Common Carrier Bureau  
James Shook, FCC Enforcement Bureau  
Lisa Tubbs, USAC, Manager Revenue Administration

# EXHIBIT 2

## July 23, 2002

Law Offices of  
**Bennet & Bennet, PLLC**  
1000 Vermont Avenue, N.W., 10th Floor  
Washington, D.C. 20005

*Caressa D. Bennet*  
*Michael R. Bennet*  
*Marjorie G. Spivak*  
*Gregory W. Whiteaker*  
*Brent H. Weingardt*  
*Howard S. Shapiro*  
*Donald L. Herman, Jr.*  
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*<http://www.bennetlaw.com>*

Senior Communications Consultants

*G. Kent Larsen*  
*Kenneth C. Johnson*

January 15, 2002

**VIA HAND DELIVERY**

Robert Haga  
Vice President, Operations, and Assistant Treasurer  
Letter of Appeal  
Universal Service Administrative Company  
2120 L Street, NW, Suite 600  
Washington, D.C. 20037

Re: **Crown Communication Inc. (499 ID 820426)**  
**Appeal of Rejection of Revised 2000 FCC Form 499-A**

Dear Mr. Haga:

On behalf of Crown Communication Inc. ("Crown"), and pursuant to 47 C.F.R. §§ 54.719 and 54.720, we are filing this letter of appeal of the Universal Service Administrative Company's ("USAC") December 18, 2001 rejection (Exhibit 1) of Crown's November 13, 2001 submission of its revised Telecommunications Reporting Worksheet - 2000 FCC Form 499-A (Exhibit 2). According to USAC's letter of rejection, Crown's submission was not accepted "because it was not filed within one year of the original submission." It is Crown's understanding that USAC has an internal rule forbidding the acceptance of a revised FCC Form 499-A if not filed within one year of the original submission. Crown respectfully requests that USAC waive its internal rule and accept Crown's revised FCC Form 499-A in accordance with § 254 of the Telecommunications Act of 1996 ("Act") and the Federal Communications Commission's ("FCC" or "Commission") Rules implementing the Act.

**BACKGROUND**

As Crown indicated in its November 13, 2001 letter accompanying its Revised 2000 FCC Form 499-A, while investigating the series of bills it received from USAC for universal service contributions that appeared out of proportion to Crown's end-user telecommunications revenue, Crown discovered that the revenue it reported on the original Form (See Attachment 3, line 408,

**Bennet & Bennet, PLLC**

January 15, 2002

Page 2

of Exhibit 2) of \$24,864,853 was incorrect. The \$24 million figure appeared to represent *all* of Crown's 1999 revenue, including tower revenue and end-user telecommunications revenue. Since the vast majority of Crown's revenue came from tower rentals, *not* end-user telecommunications revenue, the \$24 million figure was clearly reported in error and inaccurate. The correct figure, representing Crown's interstate end-user telecommunications revenue that was reported on the revised Form totals \$55,548.80. As discussed below, it would be unlawful for USAC to continue to use the inaccurate \$24 million figure, consisting mainly of revenue not subject by law to universal service contributions, to calculate Crown's universal service contributions.

**UNIVERSAL SERVICE RULES**

USAC's rejection of Crown's revised Form is contrary to the universal service provisions contained in § 254 of the Act. Section 254(d) generally limits universal service contributions to providers of interstate telecommunications.<sup>1</sup> The courts have upheld the limited scope of revenue that the FCC may use to calculate universal service contributions. For example, in its review of the FCC's universal service rules and § 254 of the Act, the U.S. Court of Appeals for the Fifth Circuit ruled that the FCC could only calculate carrier contributions using interstate telecommunications revenues.<sup>2</sup> By assessing contributions based upon Crown's non-telecommunications revenue, USAC will be in violation of the Act.

USAC's rejection also violates the FCC's rules implementing § 254 of the Act. 47 C.F.R. § 54.606, in accordance with the Act, limits the universal service contributor base to telecommunications carriers that provide interstate telecommunications services.<sup>3</sup> The FCC further limits the universal service contribution base by basing contributions on such "contributors' end-user telecommunications revenue."<sup>4</sup> For the high-cost fund, the revenue base is further limited to end-user interstate and international revenue.<sup>5</sup> Accordingly, if USAC insists upon rejecting Crown's revised Form and continues to calculate Crown's universal service contribution using the \$24 million figure containing non-telecommunications revenue, USAC will violate § 54.709(a) of the FCC's Rules limiting contribution calculations to interstate end-user telecommunications revenue.

47 C.F.R. § 54.711(a) creates an obligation for Crown to revise any "inaccurate" information contained in the Telecommunications Reporting Worksheet.<sup>6</sup> USAC's rejection of Crown's revisions harms Crown since, as an FCC licensee, Crown is subject to possible criminal prosecution under Title 18 of the United States Code for any inaccurate information contained in

<sup>1</sup> 47 U.S.C. § 254(d).

<sup>2</sup> *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 447-448 (5<sup>th</sup> Cir. 1999).

<sup>3</sup> See 47 C.F.R. § 54.706.

<sup>4</sup> 47 C.F.R. § 54.709(a).

<sup>5</sup> 47 C.F.R. § 54.709(a)(1)-(2).

<sup>6</sup> See 47 C.F.R. § 54.711(a).

**Bennet & Bennet, PLLC**

January 15, 2002  
Page 3

the Telecommunications Reporting Worksheet.<sup>7</sup> Crown's explicit obligation under the law to file revisions to correct inaccurate statements creates the implicit obligation by USAC to accept such revisions.

Further, 47 C.F.R. § 54.711(a) mandates that "[c]ontributions shall be calculated and filed in accordance with the Telecommunications Reporting Worksheet."<sup>8</sup> In accordance with the Instructions to the 2000 FCC Form 499-A (Exhibit 3), under Section E, "Obligation to file revisions," contributors, if they are filing revisions after December 1 of the calendar year of the original filing, must provide an explanation and documentation of the cause for the change of the revised figures. Crown, in compliance with these instructions, filed its revised Form on November 13, 2001 with both an explanation and clear documentation of its telecommunications revenue. Nowhere in the instructions to the 2000 FCC Form 499-A, and the FCC's Rules for that matter, is there a prohibition regarding revised filings not filed within one year of the original submission. Rather, by implication Crown is permitted *and* obligated to file revisions as they did.<sup>9</sup>

**CONCLUSION**

Crown is fully supportive of the Commission's universal service program and has expended considerable resources to come into compliance with the FCC's universal service rules. For the foregoing reasons, Crown respectfully requests that USAC waive its one year internal policy and accept Crown's revised FCC Form 499-A. If you have any questions, please contact Kenneth Johnson at our office at (202) 371-1500.

Sincerely,

*Re. [Signature]*

Marjorie G. Spivak  
Kenneth C. Johnson

Enclosures:

cc: Anita Cheng  
James Lande

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> In general, carriers have up to two years to lawfully revise charges. See 47 U.S.C. § 415. By analogy, Crown should have at least two years to revise the figures used by USAC to calculate Crown's universal service charges.

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**Crown Communication Inc.**  
**Letter of Appeal**  
**Exhibit 1**



JAN. 02. 2002 (WED) 12:18 NOCC-ROOM

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PAGE. 2/3



Universal Service Administrative Company

December 18, 2001

Crown Communication, Inc.  
375 Southpoint Blvd.  
Canonsburg, PA 15317

Filer 499 ID: 820426

Attn: Morica Gambino

RE: Form 499-A Revision Rejection

The Universal Service Administrative Company (USAC) has completed a review of the Revised FCC Form 499-A that you submitted for the purpose of revising revenue reported by Crown Communication, Inc. for the period January 1 - December 31, 1999. Based on the information provided, we are unable to accept the revision because it was not filed within one year of the original submission.

USAC recognizes that you may disagree with our decision. If you wish to file an appeal, your appeal must be received no later than 30 days after the date of this letter.

In the event that you choose to appeal the decision, you should follow these guidelines:

- Write a "Letter of Appeal to USAC" explaining why you disagree with this Revised Form 499-A Rejection letter and identify the outcome that you request;
- Mail your letter to:  
Letter of Appeal  
USAC  
2120 L Street, NW, Suite 600  
Washington, DC 20037
- Appeals submitted by fax, telephone call, and e-mail will not be processed.
- Provide necessary contact information. Please list the name, address, telephone number, fax number, and e-mail address (if available) of the person who can most readily discuss this appeal with USAC.
- Identify the "Legal Reporting Name" and "Filer 499 ID."
- Explain the appeal to the USAC. Please provide documentation to support your appeal.

80 South Jefferson Rd., Whippany, NJ 07981 Voice: 973/560-4400 Fax: 973/560-4434  
Visit us online at: <http://www.universalservice.org>

- Attach a photocopy of this Revised Form 499-A Rejection decision that you are appealing.

USAC will review all "letters of appeal" and respond in writing within 90 days of receipt thereof.

The response will indicate whether USAC:

- (1) agrees with your letter of appeal, and approves an outcome that is different from the Revised Form 499-A Rejection Letter; or
- (2) disagrees with your letter of appeal, and the reasons therefor.

If you disagree with the USAC response to your "letter of appeal," you may file an appeal with the FCC within 30 days of the date USAC issued its decision in response to your "Letter of Appeal." The FCC address where you may direct your appeal is:

Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Room TW-A325  
Washington, DC 20554

Please be sure to indicate the following information on all communications with the FCC:  
"Docket Nos. 96-45 and 97-21."

In the alternative, you may write and send an appeal letter directly to the Federal Communications Commission (FCC), and bypass USAC. Your letter of appeal to the FCC must explain why you disagree with the USAC decision. You are also encouraged to submit any documentation that supports your appeal. The FCC rules governing the appeals process (Part 54 of Title 47 of the Code of Federal Regulations 54.719 - 54.725) are available on the FCC web site ([www.fcc.gov](http://www.fcc.gov)).

If you have questions or concerns regarding this letter, please contact Lisa Harter at (973) 884-8116 or Lori Terraciano at (973) 560-4426.

Sincerely,

USAC

